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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,111	05/31/2001	David M. Albert	11028.00	1655

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EXAMINER	
COURSON, TANIA C	
ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 01/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/873,111	ALBERT, DAVID M.	
	Examiner	Art Unit	
	Tania C. Courson	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) *29-43* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19,21-26,28 and 44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. The election requirement stated in the last office action (Paper No. 5) is hereby repeated, and thus made **FINAL**.

2. Claims 29-43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

Claim Objections

3. Claim 3 is objected to because of the following informalities: in line 2, "lease" should read "least". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim language remains confusing because the bowling ball is used to determine the length of the arms, however, the bowling ball has not been positively claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 2, 4, 6, 7 and 44 are rejected under 35 U.S.C. 103(a) as being anticipated by Cannon (US 5,732,474) in view of Amburgey (US 3,161,041)

Cannon discloses a device comprising the following:

a base portion 14 having a center 20 for contacting a curved surface, the perimeter of said base portion including degree indicators 12; and

at least four arms (figure 2) for extending along the curved surface, said arms including length measurement indicators (figures 1-3), said arms connected with and extending from said base portion;

wherein at least two of said arms are adapted to rotate about the center of said base portion (figure 2).

at least two of said arms are formed integrally with said base portion (figure 1);

each of said arms is constructed of a flexible material;

said base portion has a partially spherical shape (figure 1);

at least two of the said arms extend in opposite directions from the center (figure 2).

Cannon does not disclose a semi-spherical base portion and curved arms.

Amburgey shows a device including a semi-spherical base portion (figure 5) and curved arms (figure 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Cannon to have a semi-spherical base portion and curved arms, as taught by Amburgey, since this would allow the device to be used with a curved surface because it will rest on a curved surface more readily, the curved arms would allow for easy marking of the curved surface and the substantially open middle portion would allow one to see more of the surface being marked.

With respect to the preamble of the claims: the preamble of these claims do not provide sufficient patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951).

With respect to the intended use of the apparatus, e.g. for contacting/extending along a curved surface of a bowling ball, etc: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon in view of Amburgey.

Cannon and Amburgey disclose the device described above in paragraph 7.

Cannon and Amburgey do not disclose at least one of said plurality of arms having a length sufficient to extend more than a quarter of the way down a bowling ball.

However, the limitations in this claim, absent any criticality, are only considered to be the "optimum" length of the plurality of arms of the angulator disclosed by Cannon, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy, manufacturing costs, etc. See In re Boesch, 205 USPQ 215 (CCPA 1980), and since the bowling ball is not considered to be part of the device as stated above in paragraph 5.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon in view of Amburgey and further in view of Albright (US 3,096,586).

Cannon and Amburgey disclose the device described above in paragraph 7.

Cannon and Amburgey do not disclose the alignment of the arms with the center of the base portion.

Albright shows a device including the alignment of the indicator arms with the center of the base portion (figures 1-3). Therefore, it would have been obvious to one having ordinary

skill in the art at the time the invention was made to modify the device of Cannon and Amburgey to align the indicator arms with the center of the base portion, as disclosed by Albright, since this would allow one to sketch a line that is exactly in the center of the surface on which the base is resting.

10. Claims 8-19, 21-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon, Amburgey and Albright as applied to claim 5 above.

Cannon, Amburgey and Albright disclose the device described above in paragraph 9. Cannon, Amburgey and Albright further disclose a collar that attaches the indicator arms and a substantially open middle portion.

Cannon, Amburgey and Albright do not disclose at least one of said plurality of arms having a length sufficient to extend more than a quarter of the way down a bowling ball.

However, the limitations in this claim, absent any criticality, are only considered to be the "optimum" length of the plurality of arms of the angulator disclosed by Cannon, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy, manufacturing costs, etc. See In re Boesch, 205 USPQ 215 (CCPA 1980), and since the bowling ball is not considered to be part of the device as stated above in paragraph 5.

Response to Arguments

11. Applicant's arguments filed 21 October 2002 have been fully considered but they are not persuasive.

12. Applicant has argued that the intended use of the claimed invention is for laying out bowling balls. Thus, the bowling ball remains unclaimed, it's only intended use.

13. Applicant's argument, with respect to the 112 rejection to claims 3 and 10, have been considered, but are not persuasive. The Applicant confirms that the bowling ball is not being claimed, however one needs a bowling ball to measure the length of the arm. Applicant's arguments are inconsistent.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose gauges for measuring spherical objects:

Takahashi (U.S. 2002/0011005 A1)

Taylor (U.S. 3,875,668)

Ackerman et al. (U.S. 2,706,338)

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (703) 305-3031. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (703) 308-3875. The fax number for this Organization where this application or proceeding is assigned is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
January 9, 2003